

POLLACK, P.C.

INTELLECTUAL PROPERTY & TECHNOLOGY LICENSING ATTORNEYS

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URL: www.pollackpc.com**FACSIMILE TRANSMITTAL**

FROM: Grant E. Pollack, Esq.

DATE: November 19, 2006

SERIAL NO.: 10/528,164

NO. OF PAGES (including cover): 26

FILED: March 14, 2005

DOCKET NO.: 741038.1001

PLEASE DELIVER THE FOLLOWING TO:

<u>Name</u>	<u>Firm/Company</u>	<u>Fax No.</u>
PCT Legal Administration	U.S. Patent and Trademark Office	(571) 273-0459

MESSAGE:

Please see attached.

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20 NOV 2006

Legal Staff
International Division

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1038.1001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Ravi I. SHARMA
Serial No. : 10/528,164
Filed : March 14, 2005
For : INVERTED KEYBOARD INSTRUMENT
AND METHOD OF PLAYING THE
SAME
Group Art Unit : Not yet assigned
Examiner : Not yet assigned
Confirmation No. : 6495

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20 NOV 2006

Legal Staff
International Division**PETITION TO WITHDRAW HOLDING OF
ABANDONMENT UNDER 37 C.F.R. § 1.181**

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicant submits this Petition under 37 C.F.R. § 1.181 in response to a Notification Of Abandonment that issued in the captioned Application on April 10, 2006. A copy of the Notification is attached as Exhibit A. For reasons to follow, Applicant respectfully requests that the holding of Abandonment in this Application be withdrawn, without delay.

FACTS

This Application was filed in the U.S. Patent and Trademark Office (hereinafter "PTO") under 35 U.S.C. § 371 on March 14, 2005, such commencing the U.S. National Stage of International Application No. PCT/US2004/024486. Applicant respectfully notes that the present Application represents an EARLY submission of and entry to the National Stage in the U.S., the thirty (30) month deadline for National Stage entry not being set to expire until January 25, 2006.

Serial No. 10/528,164
Page 2

Based on Applicant's file wrapper and other information available for our consideration, we respectfully submit that, at the time of filing the referenced Application, the relevant Filing Fee was, indeed, transmitted with the Application to the Patent Office. Attached as Exhibit B is a copy of the Credit Card Payment Form, Form PTO-1338, as indicated to have been transmitted with the Application at the time of filing, in payment of the Fee required for entry to the U.S. National Stage. Also provided, as Exhibit C, is a copy of the Return Postcard from the undersigned Counsel's file wrapper, also indicated to have accompanied the Patent Application Transmittal documents at the time of filing, such indicating that a Credit Card Payment Form was provided. Although a diligent search of the file wrapper for this Application has been conducted by Counsel, an original stamped Return Postcard bearing the Application Serial Number and initial Filing Date confirmation has not been located. Accordingly, Counsel has concluded that such Return Postcard was not received from the Patent Office.

Pursuant to recent communications with Examiner Leonard Smith of PCT Legal Administration, Counsel was advised that the foregoing alone may not be considered sufficient proof of submission of the Filing Fee. Accordingly, Counsel provides the following additional facts and circumstances considered to be relevant to this Petition Under 37 C.F.R. § 1.181.

I. The PCT Branch Omitted To Issue A Notice Of Insufficient National Fee Required (Form PCT/DO/EO/912) Nor Did It Otherwise Notify Applicant Of Its Non-Receipt Of The Filing Fee

We respectfully submit that, during the more than ten (10) months that followed Applicant's EARLY submission of and entry to the National Stage in the U.S., during which the subject Application - we understand - was retained in a file room at the PCT Branch among many thousands of other Applications, Applicant was *never* notified of any issue regarding receipt of the subject Filing Fee.

Upon discussions with the PCT Help Desk, subsequent to receipt of the subject Notification Of Abandonment, Counsel for Applicant was advised that a Notice Of Insufficient Basic National Fee was *not* sent to Applicant because, due to a considerable backlog of work at the PCT Branch, they "didn't get to" this Application until several months after the final deadline for National Stage entry. Although the PCT Help Desk asserted to Counsel subsequently that it was under no obligation to issue the aforementioned Notice, we respectfully dispute such a contention as electing to give one Applicant Notice and, hence, an opportunity to correct, but not another, we submit, is *inter alia* prejudicial to Applicant's Patent Rights.

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II. Applicant's Counsel Timely And Diligently Monitored
The Status Of The Captioned Application, Only To Be
Mislead By Information Provided By The PCT Branch

Pursuant to periodic docket checks conducted by Counsel, the first of which occurred on or about May 24, 2005, it was noted by Counsel that no written confirmation of Applicant's filing nor of the filing particulars for the captioned Application had been received. Subsequently, on June 30, 2005, Counsel telephoned the PTO and inquired about the status of the Application. Specifically, Counsel confirmed that the Application had been received, and was advised that it was "undergoing pre-examination processing". A copy of Counsel's telephone record of this communication is attached as Exhibit D.

Next, on or about September 5, 2005, a second docketing check was conducted for this Application and it was noted that no notification of the filing particulars or invitation to file an inventor's Declaration had yet been received. Accordingly, on or about September 16, 2005, Counsel again telephoned the PTO, and inquired about the Application's status. Counsel was informed by the PCT Help Desk that the Application was still undergoing pre-examination processing, and that the PCT Branch was currently operating under a 6-month backlog in processing U.S. National Stage Applications. A copy of the corresponding telephone record of Counsel is attached as Exhibit E.

Having still received no written acknowledgment as of November 30, 2005, Counsel contacted the PTO once again, namely, on or about December 2, 2005. This time a PCT Help Desk attendant confirmed to Counsel that the subject Application had been received, was in their "central file room", but that it was *still* "undergoing pre-examination processing". The attendant indicated that the case was apparently "hung up" in processing, but that he would send an e-mail to the PCT paralegal in charge of the case in an effort to "shake this one loose". Counsel was informed, in addition, that there was now an 8-9 month backlog in processing U.S. National Stage Applications, such backlog, Counsel was then advised, being one allegedly measured from 30 months after the priority date. As such, it was understood by Counsel that the Application was apparently caught up in administrative delays and would not likely be processed until the following Summer, 2006. A copy of Counsel's telephone record confirming the foregoing discussion is attached as Exhibit F.

Concurrently with the foregoing, Counsel monitored the entries for this Application in PRIVATE PAIR. According to Counsel's records, such inquiries were made on or about June 30, 2005, September 21, 2005, November 30, 2005 and December 2, 2005. An exemplary copy dated September 21, 2005 of what was indicated on PRIVATE PAIR each time it was accessed, is attached as Exhibit G. As shown in Exhibit G, and according to PRIVATE PAIR, the Application was indeed undergoing preexamination

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processing and, we respectfully submit, there were no outstanding issues indicated for this Application.

The deadline for payment of the Filing Fee, i.e., January 25, 2006, then came and went, again without word from the Patent office.

Then, to Counsel's surprise, on April 10, 2006, Notification Of Abandonment of the Application was issued by the Patent Office. According to the Notification (Exhibit A), Applicant failed to provide the full U.S. Basic National Fee by 30 months, citing 37 C.F.R. § 1.495(b)(2).

The issue taken by Applicant by way of this Petition, we submit, relates not only to (i) omission by the PCT Branch to issue a Notice Of Insufficient Basic National Fee during the nearly ten (10) months that followed Applicant's EARLY submission of and entry to the U.S. National Stage, but also (ii) repeated misinformation from attendants at the PCT Help Desk and on PRIVATE PAIR as to the Official Status of this Application, despite Counsel's timely and diligent efforts and periodic inquiries with the PCT Branch regarding the same.

While the PCT Branch has proffered to Counsel by telephone that (i) the PCT Help Desk is under no obligation to provide "accurate information" to Counsel upon Counsel's telephone inquiries regarding any Application matter, and that (ii) it is not reasonable for Counsel to rely on information displayed on PRIVATE PAIR, both contentions of which we vehemently dispute, the aforementioned actions by the PCT Branch placed Applicant and his Counsel in an unreasonable and impossible position.

Indeed, we submit, it was not through any error of Applicant or his Counsel that the subject Filing Fee was not collected by the PTO, but rather, a result of administrative delay and oversight by the PCT Branch, as well as repeated, and consistent, misinformation to Counsel, which misinformation lead Counsel to take no further action, that the subject National Stage Application went Abandoned.

Whether what underlies it all is an internal communications and administration issue at the PTO, or simply a matter of inexperience of PCT Staff, it is not, we respectfully submit, a matter for which Applicant and his Counsel should pay the price.

Withdrawal of the holding of Abandonment of this Application is, therefore, respectfully requested. Concurrently, Applicant respectfully submits herewith a Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), which Petition To Revive is to

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Page 5

be considered, *in the alternative to*, the present Petition To Withdraw Holding Of Abandonment.

Respectfully submitted,

Dated: November 19, 2006

I hereby certify that this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office, (571) 273-0459, on _____ November 19, 2006

Name _____ Grant E. Pollack

Signature


Grant E. Pollack, Esq.

Registration No. 34,097

POLLACK, P.C.

The Chrysler Building

132 East 43rd Street, Suite 760

New York, New York 10017

Telephone: (646) 265-1468

Facsimile: (646) 253-1276

E-mail: gpollack@pollackpc.com

Attorney for Applicant

E

Our Ref.: 741038.1001

GEP

March 14, 2005

Re: U.S. National Patent Application based upon
International Application No. PCT/US04/024486
Applicant: Ravi Ivan SHARMA
Title: INVERTED KEYBOARD INSTRUMENT
AND METHOD OF PLAYING THE SAME

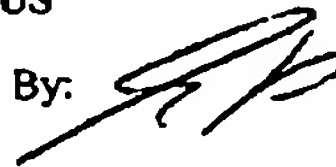
- Transmittal letter under 35 U.S.C. 371 (2 pages, in duplicate)
- Specification, Claims and Abstract (50 pages) and Drawings (13 sheets)
- Certificate of Mailing by Express Mail (1 page)
- Letter Re Priority (1 page)
- Credit Card Payment Form (1 page)

Mail Stop PATENT APPLICATION

Envelope: Express Mail Label No.: EV 592479782 US

Due Date: N.A.

Checked By:



Grant E. Pollack, Esq., P.C.
132 East 43rd Street, Suite 760
New York, New York 10017

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Billing Date: 07/28/05 Page 1 of 51
Telephone Number: 914 762 4182
Account: **REDACTED**
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GRANT POLLACK

Account Summary**Previous Charges**

Payment Received Jul 29. Thank You.

Past Due Charges**New Charges**

Verizon (page 3)

Verizon Online (page 51)

Verizon Wireless (page 5)

Verizon Long Distance (page 4)

Total New Charges Due August 22

Avoid a 1.5% late payment charge.

Payment must be received by 08/22/05.

Total Due (Past Due + New)

These monthly charges are for your service from
July 28 to August 27.

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Billing Date: 07/28/05 Page 12 of 51
Telephone Number: 914 762 4182
Account: **REDACTED**
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Date	Time	Rate	Call	Called	Call	Usage	Home	Other	Other	
		Period	Origination+	Phone	Destination	Minutes	Airtime	Call	Call	Total
				Number		Type	Charges	Type	Charges	

REDACTED

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REDACTED

E

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Billing Date: 09/28/05 Page 1 of 29
Telephone Number: 914 762 4182
Account: **REDACTED**
How to Reach Us: See page 2

GRANT POLLACK

Account Summary**Previous Charges**

Payment Received Sep 22. Thank You.

Past Due Charges**New Charges**

Verizon (page 3)

Verizon Online (page 29)

Verizon Wireless (page 5)

Verizon Long Distance (page 4)

Total New Charges Due October 24

Avoid a 1.5% late payment charge.

Payment must be received by 10/24/05.

Total Due (Past Due + New)

These monthly charges are for your service from
September 28 to October 27.

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No	Date	Time	Rate Period	Call Origination+	Called Phone Number	Call Destination	Usage Minutes	Type	Home Airtime Charges	Other Call Type	Other Call Charges	Total
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REDACTED

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Billing Date: 12/28/05 Page 1 of 35
Telephone Number: 914 762 4182
Account: **REDACTED**
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GRANT POLLACK

Account Summary**Previous Charges**

Payment Received Dec 27. Thank You.

Past Due Charges**New Charges**

Verizon (page 3)

Verizon Online (page 35)

Verizon Wireless (page 6)

Verizon Long Distance (page 4)

Total New Charges Due January 23

Avoid a 1.5% late payment charge.

Payment must be received by 01/23/06.

Total Due (Past Due + New)

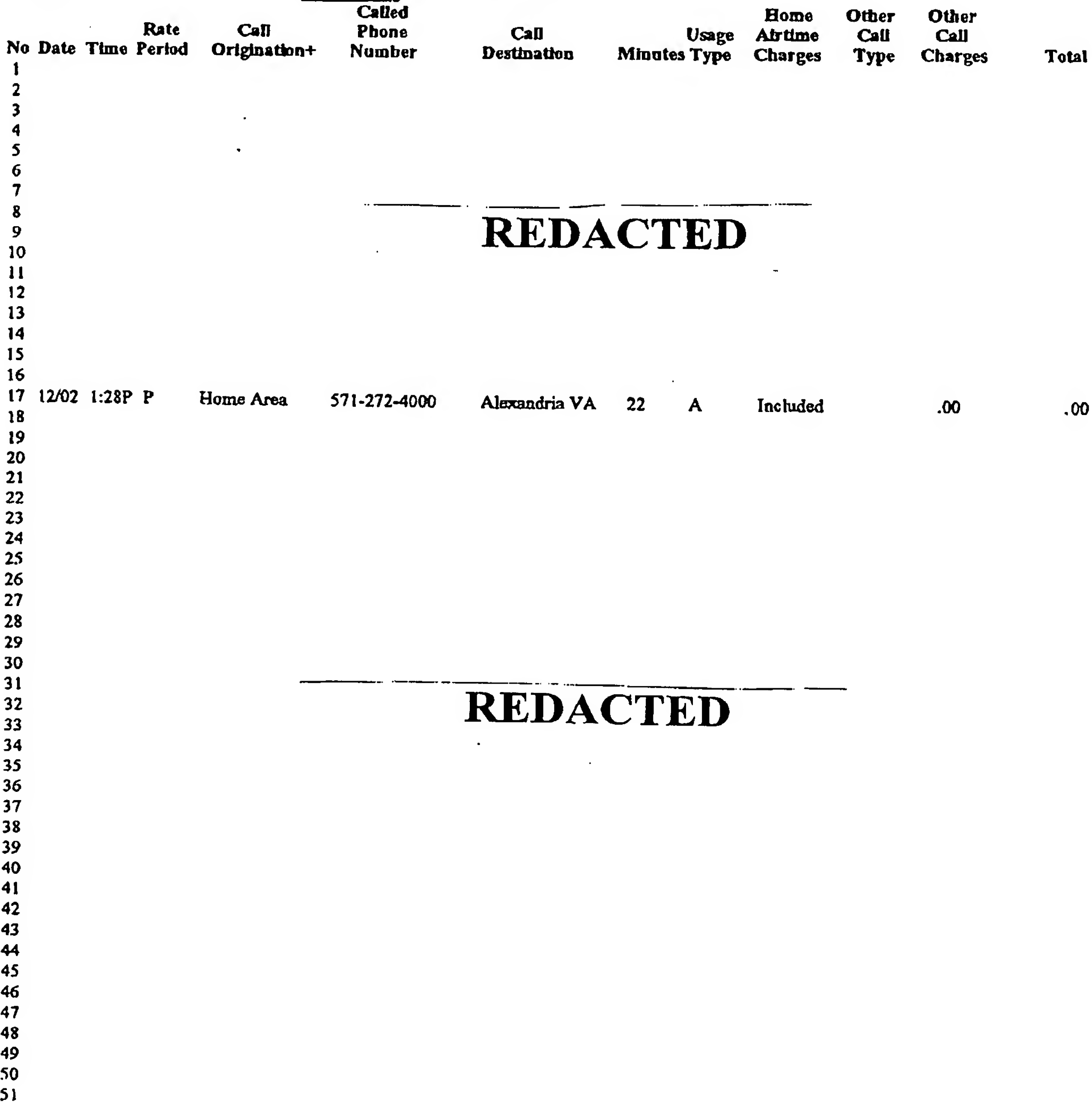
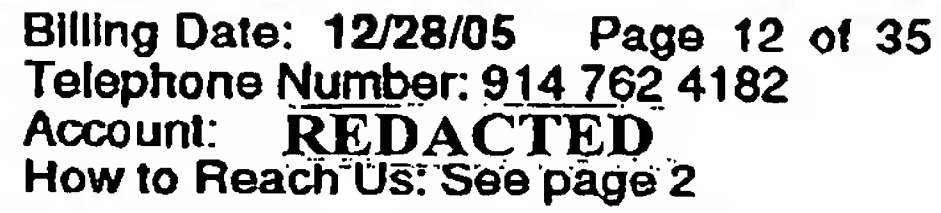
These monthly charges are for your service from
December 28 to January 27.

REDACTED**Mail payments to:**

Verizon, PO Box 1100, Albany NY 12250-0001

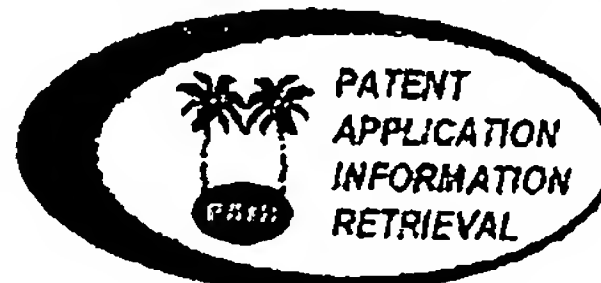
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Search results as of: 9-21-2005::3:44

Search results for application number:10/528,164

Application Number:	10/528,164	Customer Number:	41226
Filing or 371(c) Date:	-	Status:	Application Undergoing Preexam Processing
Application Type:	Utility	Status Date:	03-31-2005
Examiner Name:	-	Location:	WORK UNIT DO/EO, PCT 8TH FLOOR
Group Art Unit:	-	Location Date:	07-27-2005
Confirmation Number:	6495	Earliest Publication No:	-
Attorney Docket Number:	741038.1001	Earliest Publication Date:	-
Class/ Sub-Class:	-/-	Patent Number:	-
First Named Inventor:	Ravi Sharma,	Issue Date of Patent:	-
Title Of Invention:	Inverted keyboard instrument and method of playing the san		

Select Search Option

Continuity Data

Publication Review

Search

File History

Date	Contents Description
03-15-2005	Initial Exam Team nn

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H

PTO/SB/64/PCT (10-05)

Approved for use through 03/31/2007. OMB 0651-0021

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT
DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number
(Optional)
741038.1001

First Named Inventor: Ravi Ivan SHARMA

International (PCT) Application No.: PCT/US2004/024486

U.S. Application No.: 10/528,164
(if known)

Filed: July 26, 2004

Title: INVERTED KEYBOARD INSTRUMENT AND METHOD OF PLAYING
THE SAMEAttention: PCT Legal Staff
Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The above-identified application became abandoned as to the United States because the fees and documents required by 35 U.S.C. 371(c) were not filed prior to the expiration of the time set in 37 CFR 1.495(b) or (c) as applicable. The date of abandonment is the day after the date on which the 35 U.S.C. 371(c) requirements were due. See 37 CFR 1.495(h).

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee
- (2) Proper reply
- (3) Terminal disclaimer with disclaimer fee which is required for all international applications having an international filing date before June 8, 1995; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity - fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Proper reply

A. The proper reply (the missing 35 U.S.C. 371(c) requirement(s)) in the form of
Filing Fee - Form PTO-1338 (identify type of reply):

☒ has been filed previously on March 14, 2005

☒ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/64/PCT (10-05)

Approved for use through 03/31/2007. OMB 0651-0021

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

Date

Grant E. Pollack

34,097

Typed or Printed Name

Registration Number, if applicable

POLLACK, P.C.

646-265-1468

Address

Telephone Number

132 East 43rd Street, Ste. 760, New York, NY 10017

Address

Enclosures: ☐ Response☒ Fee Payment☐ Terminal Disclaimer☐ Other (please identify):